APPENDIX A—Order and Opinion of The Six Circuit Court of Appeals Remanding for reimposition of THE fine filed Feb 24, 2003

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 01-2107

D.C. No. 99-71069

United States of America
Plaintiff-Appeallee,

Alice Pauley, Joseph Morrison
Defendants - Appellants,

Appeal from the United States
District Court for the Eastern District
of Michigan at Detroit.
George E. Woods, District Judge.

Argued and Submitted; January 28, 2003

Decided and Filed: February 24, 2003

Before: GUY AND MOORE, Circuit Judges:
BECKWITH, District Judge.

The Honorable Sandra S. Beckwith, United States District Judge for the Southern District of Ohio, sitting by designation.

Opinion by Judge Karen Nelson Moore

OPINION

KAREN NELSON MOORE, Circuit Judge. The United States, which had been granted summary judgment on its Clean Water Act action against defendants Alice Pauley and Joseph Morrison, appeals from the district court's *sua sponte* order that vacated the $25,000 fine that the district court had previously imposed. Because the district court lacked the power to grant such relief *sua sponte*, we **REVERSE** the district court.

I. BACKGROUND

On March 5, 1999, the United States filed a complaint against Alice Pauley and her father, Samuel Pauely, who together owned certain real property on Harsens Island, Michigan; Joseph Morrison , who claimed to have an ownership interest in the property; and John Horvath, a construction contractor. The compliant alleged that the defendants violated the Clean Water Act by trenching, grading, and filling wetlands on the Pauleys' property

without a permit. The complaint sought a civil fine and an injunction requiring the defendants to restore the property to its natural condition.

On October 31, 2000, U.S. District Judge Cleland awarded summary judgment to the United States. The court found that the defendants had "discharged a pollutant, from a source point, into navigable waters of the United States, without a permit, "Joints Appendix" ("J.A.") at 29, within the meaning of the Clean Water Act. Accordingly, the court scheduled a penalty hearing on February 8, 2001, to determine the scope of any relief. At the hearing, the government presented a consent decree between the United States and defendant Samuel Pauley. Samuel Pauley, who had quit claimed his interest in the property to Alice Pauley and Joseph Morrison on January 26, 2001, shortly before the scheduled penalty hearing, agreed to hire a contractor to restore the property. Accordingly to the consent decree, Samuel Pauley who would hire a contractor to remove all fill material from the wetland by May 15, 2001. The consent decree was contingent on either Samuel Pauley receiving permission from the new owners, Alice Pauley and her husband, Joseph Morrison, to enter the property and complete the restoration or on a court order requiring the new owners to permit him the necessary access. On February 8, 2001, the court ordered Alice Pauley to "Allow access to the property by the

Contractors and Corps of Engineers to complete the restoration as set forth in the Consent Decree. " J.A." at 81.

Before considering a civil penalty, the court adjourned the penalty hearing for six weeks so that Alice Pauley and Joseph Morrison could retain counsel. When the hearing resumed, and the defendants informed the court that they would precede pro se, Judge Cleland imposed a $25,000 fine against Alice Pauley and Joseph Morrison for their Clean Water Act violations. The fine was imposed pursuant to 33 U.S.C. § 1319 (d), which authorizes civil penalties up to $25,000 per day of violation and requires the court to consider the seriousness of the violation, any history of violations good faith efforts to comply with requirements, the impact of the fine on the offender, and any other factors that "justice may require." 33 U.S.C. § 1319 (d). Granting the United States's request to imposed the maximum fine allowed for one day of violation, Judge Cleland noted that the land had been in violation for approximately six years. Although the scope of the violation was not huge, Judge Cleland said, as it affected only a small piece of land, Alice Pauley's and Joseph Morrison's history of refusing to comply with the law warranted the fine. Judge Cleland said that they had failed to keep their promises that they would remedy the violation, and he cited the " strong indications that the defendants were essentially, stringing the Corps along and trying to see if ...the Corps would simply give up

after a period of time."J.A." at 245. The court also considered Alice Pauley's and Joseph Morrison's economic situations and the costs to the government of their intransigence before imposing the $25,000 fine. Despite the injunction, Alice Pauley refused Samuel Pauley, the contractor, and the Army Corps of Engineers access to the property to comply with the terms of the settlement. According to the United States, Alice Pauley sent the government a letter in late February stating that "we have decided that we will NOT allow any one on our property," and that "we do not plan on being bullied into anything especially by the Court or the Plaintiff(s)." J.A. at 83-84. On May 9, 2001, the government received a letter from Samuel Pauley's attorney, who stated that on at least five separate occasions, Alice Pauley had told Samuel Pauley that she would not allow him or his contractor access to the property. That day, the United States filed an emergency motion to enforce the consent decree. Judge Cleland disqualified himself, and the case was reassigned to U.S. District Judge Woods.

At the hearing on the United States emergency motion Judge Woods appears to have succeeded in convincing Alice Pauley to comply with the courts order. However, Judge Woods also vacated *sua sponte* the $25,000 fine that Judge Cleland had levied against Alice Pauley and Joseph Morrison. Judge Woods announced early in the hearing, "The Court expects the imposition of fines will not motivate Alice Pauley to comply. I told you I'm not impressed with fines. I'm not interested in fines

being imposed." J.A. at 263. Then, after recounting the case's history, Judge Woods invited Alice Pauley to the lectern and announced, "Tell you what I'm going to do right now. I'm setting aside [the] $25,000 fine. I don't think it serves any purpose at all and I do not feel that it is a sword hanging over your head at all." J.A. at 273. In denying the United States's motion to reconsider, Judge Woods said, "I've set aside the $25,000 fine which may have had something to do with getting this baby settled. So be it. It's set aside." J.A. at 288. Judge Woods entered an order vacating the civil penalty.

The United States timely appealed from the order vacating the civil penalty and we have jurisdiction pursuant to 28 U. S. C. §1291.

II. ANALYSIS

As Judge Cleland's comments in imposing the $25,000 fine indicate, Alice Pauley and Joseph Morrison have a history of obstructing the Corp's efforts to enforce the Clean Water Act and to remedy the violations on Alice Pauley's property. Accordingly, when the case came before judge Woods on the United States emergency motion to compel compliance, Judge Woods on the United States emergency motion to compel compliance, Judge Woods was understandably prepared to use whatever tools he had available to accomplish compliance with the court's earlier injunction. However, vacating *sua sponte* one order in

an effort to encourage a party to comply with another order was not, under our precedent, an available tool.

Judge Woods did not explicitly indicate the basis on which he vacated the $25,000 civil penalty, but we interpret the district court as having relieved the defendants from a final judgment pursuant to Federal Rule of Civil Procedure 60(b)(6), as this rule most nearly describes the districts court's action. Rule 60(b)(6) provides that, "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment' for 'any ..reason justifying relief from the operation of the judgment.' Fed R. Civ. P. 60(b)(6). The civil fine from which the district court granted relief constituted a final judgment, as it had been imposed in connection with a judgment granting summary judgment with respect to all of the plaintiff's claims against all remaining defendants. That the district court had maintained jurisdiction to ensure that the injunctive relief was properly accomplished is irrelevant for purposes of determining whether the grant of summary judgment and imposition of a civil penalty constituted final judgment, as "the court may enter a final and appealable judgment and s till retain jurisdiction over the action so as to make sure that its order is applied correctly." 10 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and procedure* § 2651 at 14 (3d ed. 1998) (interpreting Fed. R.

P. 54 (a), which defines "judgment" as used in Federal Rules of Civil Procedure). Accordingly, the question is whether the Rule 60 (b) relief was properly granted. We review orders granting relief from a prior order under Rule (60) (b) for abuse of discretion, but we review questions of law de novo. *Blackard v. Memphis area Med. Ctr. For Women, Inc.*, 262F.3D 568,572 (6th Cir.2001) ,*cert. denied*,-U.S.-, 122 S. Ct. 1908 (May 13, 2002).

We have held that a district court may not *sua sponte* grant relief to pursuant to Rule 60 (b) [1] In *Eaton v. Jamrog*, 984 F. 2d. 760 (6th Cir. 1993, we reasoned that because Rule 60 (6) explicitly requires relief under the rule to occur "on motion," courts may not grant such relief except upon "a motion from the affected party. *Id.* at 762; *accord Lewis v. Alexander*, 987F. 2d. 392,396 (6th Cir. 1993) ("*Eaton* decided... that a district court may not act *sua sponte* to grant relief from judgment through Rule 60 (b)."") Here, no motion for Rule 60 (b) relief was made. Accordingly, under our precedents the order vacating the relief exceeded the district court's authority.

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[1] Circuits are split on the question whether a district court may grant Rule 60 (b) relief *sua sponte*. The Tenth Circuit agrees with our view that such relief is impermissible. *See Dow v.*

(Cont'd)

We also note that even if the district court had the authority to vacate the order, district courts should not use their authority under Rule 60 (b) to reward parties' contempt of prior orders. The initial district judge had imposed the fine after carefully considering the factors required under 33 U.S.C. § 1319 (d), and the fine's purposed was to punish violations of the Clean Water Act, not to induce these offenders to remedy the violation. Of course, if any of the consideration listed in

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(Cont'd)
Baird, 389 F.2d 882, 884-85 (10th Cir. 1968) (nothing that whereas Rule 60 (a) permits the district court to correct clerical errors "of its own initiative," Rule 60 (b) permits corrections only upon motion). The Second, Forth, Fifth and Ninth Circuits have held that such *sua sponte* is permissible. *See Fort Knox Music Inc. V. Baptiste,* 257 F.3D 108, 111 (2d Cir. 2001) ("While normally such relief is sought by motion of a party, *see* Fed.R.Cir.P.60 (b), nothing forbids the court to grant such relief *sua sponte."): Kingvision Pay-Per-View Ltd v. Lake Alice Bar,* 168 F..3d 347, 351 (9th Cir. 1999) (reasoning that although rule say "on motion,' it " does not explicitly say" by a party," suggesting that the relief could be on the court's own motion); *McDowell v. Celebrezze,* 310 F.2d 43, 44 (5th Cir. 1962) ("The Court could initiate this on its own motion."); *United States v. Jacobs,* 298 F.2d 469, 472 (4thCir. 1961) ("The rule need not necessarily be read as depriving the court of the power to act in the interest of justice in an unusual case in which its attention has been directed to the necessity for relief by means other than a motion.").

Sec 1319 (d), such as the economic impact that the judgment would have on the offenders, had changed, Relief from the judgment might have been appropriate. Similarly, upon motion of a party, the district court might have used it Rule 60 (b) authority to grant relief in the presence of "exceptional or extraordinary circumstances" that this court held are necessary for relief under Rule 60 (b) (6) in *Hopper V. Euclid Manor Nursing Home, Inc,*. 867 F. 2d 291, 294 (6th Cir. 1989). However, those circumstances are not present here. Rather, the only unusual circumstance present was the defendants intransigently refused to comply with the districts court's order to allow access to the property for remediation. Vacating a prior order for the sole purpose of inducing compliance with another order would reward contempt.

This case is somewhat analogous to the circumstances that we faced in *Hopper*. There a prevailing plaintiff was required to pay certain costs pursuant to Rule 68, because the plaintiff had refused the defendant's offer to settle for an amount that turned out to be greater than the nominal damages that the plaintiff was ultimately awarded. The district court then used Rule 60 (b) (6) to vacate the earlier judgment in favor of the plaintiff, and the court entered judgment in favor of the defendant, a move that rendered Rule 68 inapplicable. *See Hopper*, 867 F.2d at 293. We reversed. Because the district court had "sought to negate the operation of Rule 68" which encourages plaintiffs to

consider settlement offers seriously lest the plaintiff win a smaller judgment and be forced to pay cost, and because granting Rule 60(b) relief would reward the plaintiff's refusal to accept an appropriate settlement offer. *Id.* at 294-95. Similarly, here granting relief from the civil penalty served to reward the defendants' refusal to comply with court orders.

The district court's sole purpose in vacating the civil fine here was not, of course, to reward the defendants' disregard of the law. The district court's primary purpose appears to have been to remedy the violation of the Clean Water Act. That purpose was appropriate, and Judge Woods noted that the hearing on the emergency motion to comply had resulted in a new settlement. defendants intransigently refused to comply with the district court's order to allow access to the property for remediation. There was, however, nothing to settle: Judge Cleland had already determined that Alice Pauley and Joseph Morrison had an obligation to permit contractors to remedy a violation, and he had ordered them to comply. The problem was not that the parties failed to agree on an appropriate resolution, but that Alice Pauley and Joseph Morrison had refused to fulfill their court-ordered obligations. Alice Pauley's and Joseph Morrison's blatant refusal to comply with a court order would have warranted contempt proceedings, but certainly not rewarded for their obstruction.

III CONCLUSION

Because the district Court did not have the power to vacate the civil penalty *sua sponte,* we **REVERSE** and **REMAND** for reimposition of the fine.

APPENDIX B – ORDER ASSESSING A CIVIL PENALTY AS TO DEFENDANTS ALICE PAULEY MORRISON AND JOSEPH MORRISON, ONLY DATED MARCH 30, 2001

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Case No: 99-71069

UNITED STATES OF AMERICA,
Plaintiffs,
v.

SAMUEL PAULEY, ALICE PAUELY, JOSEPH MORRISON and JOHN HORVATH, jointly and severally,
Defendants.

ORDER ASSESSING A CIVIL PENALTY AS TO DEFENDANTS ALICE PAULEY MORRISON AND JOSEPH MORRISON, ONLY

This court having granted the plaintiff, United States of America's, Motion for Summary Judgment as to defendants Samuel Pauley, Alice Pauley Morrison[1] and

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[1] In documents filed with the Court, defendant Alice Pauley, has stated that her name is Alice Pauley Morrison.

Joseph Morrison; plaintiff having filed a Motion for Injunctive Relief and Civil Penalties as to defendants Samuel Pauley, Alice Pauley Morrison and Joseph Morrison; defendant Samuel Pauley having entered into a Consent Judgment to restore the wetlands in question; and evidentiary hearing having been held on the assessment of civil penalty and testimony taken; and the Court being fully advised in all premises;

IT IS HEREBY ORDERED for reasons stated on the record on March 27, 2001 that a civil penalty of Twenty-Five Thousand dollars ($25,000.00), is imposed against defendants Alice Pauley Morrison and Joseph Morrison jointly and severally, together with interest as allowed by law.

DATED March 30, 2001

s/ Robert Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

APPENDIX C—JUDGMENT FOR PLAINTFF FOR $25,000.00 DOLLARS – DATED MARCH 30, 2001

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

No: 99-71069

UNITED STATES OF AMERICA,
Plaintiff,

v.

SAMUEL PAUELY, ALICE PAULEY, JOSEPH MORRISON and JOHN HORVATH, jointly and severally,
Defendants,

ORDER RE: $ 25,000.00 JUDGMENT

This action having come before the Court, the issues having been fully adjudicated and a decision having been duly rendered:

IT IS ORDERED AND ADJUDGED that plaintiff, United States of America, recover a civil penalty from defendants Alice Pauley Morrison and Joseph Morrison, jointly and severally, a civil penalty in the amount of Twenty-Five Thousand dollars ($25,000.)

Defendant's Alice Pauley Morrison and Joseph Morrison shall pay the said civil penalty by a check made payable to the United States of America, c/o Geneva Halliday, Assistant United States Attorney, U.S. Attorney's Office, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226. The $25,000 civil penalty is due to plaintiff, United States of America upon entry of this judgment. Plaintiff shall be entitled to interest as provided by law from the date of this judgment until satisfied.

DATED: 30, March 2001

s/ Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

APPENDIX D—ORDER OF THE UNITED STATES DISTRICT VACATING, $ 25,000.00 JUDGMENT FOR PLAINTIFF – DATED AND FILED JUNE 07, 2001

UNITED STATES DISTRICT OURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

No: 99-71069

UNITED STATES OF AMERICA
Plaintiff,

v.

SAMUEL PAULEY, ALICE PAUELY, JOSEPH MORRISON, and JOHN HORVATH , jointly and severally,
Defendants,

ORDER RE: VACATING $ 25,000.00 JUDGMENT

On February 8, 2001, a Consent Decree was entered into between plaintiff, United States of America and defendant, Samuel Pauely, wherein he agreed to restore the property in question pursuant to the terms set forth on the Consent Decree. On February 8, 2001, the Honorable Robert H. Cleland, United States District Judge for the Eastern District of Michigan, entered an Order ordering that defendant, Alice Pauley (Morrison)

shall allow access to the property by the contractor and the Corps of Engineers to complete the restoration set forth in the Consent Decree with Defendant Samuel Pauley. On May 9, 2001, plaintiff filed an Emergency Motion to Enforce the Consent Decree as to Samuel Pauley and to enforce the Order requiring Alice Pauley (Morrison) to allow access to the property. Attached to the motion was a letter from the attorney for defendant, Samuel Pauley, indication that his client was not going to be able to restore the property in question because Alice Pauley (Morrison) had advised her father, Samuel Pauley, that she would not allow access for him and his contractors to the site to do the restoration.

A hearing was held on plaintiff's Motion to Enforce the Consent Decree as to Samuel Pauley and Order as to Defendant Alice Pauley (Morrison) on May 29, 2001. At the hearing Alice Pauley Morrison agreed on the record, that she would allow access to the property by the contractors to complete the restoration set forth in the Consent Decree and by the Corps of Engineers to allow inspection as set forth in the Consent Decree.

IT IS HEREBY ORDERED that Alice Pauley Morrison shall allow access to the property by the contractor and Corps of Engineers so that the restoration can be completed as set forth and under the terms in the original Consent Decree. It is further ordered that the restoration be completed as soon as possible, but in any event no later that July 15, 2001.

IT IS FURTHER ORDERED that defendants Alice and Joseph Morrison's Motion for a Stay Pending Appeal is DENIED.

It is further ordered that the judgment awarding plaintiff a civil penalty from defendants Alice Pauley Morrison and Joseph Morrison in the amount of $25,000 entered by the Honorable Robert H. Cleland on March 30, 2001 is VACATED. IT IS FURTHER ORDERED that plaintiff's oral motion for reconsideration of the vacating of the Judgment of $25,000 is DENIED.

DATED: June 07, 2001

s/ George E. Woods
GEORGE E. WOODS
UNITED STATES DISTRICT JUDGE

APPENDIX E—ORDER OF THE UNITED STATES DISTRICT COURT REINSTATING $25,000 JUDGMENT DATED AND FILED MARCH 17, 2003

UNITED STATES OF AMERICA,
Plaintiff,

v.

SAMUEL PAUELY, ALICE PAULEY, JOSEPH MORRISON, and JOHN HORVATH, jointly and severally,
Defendants,

ORDER RE: REINSTATING 25,000 JUDGMENT

On February 24, 2003 the United States Court of Appeals for the Sixth Circuit held that this Court lacked the power to vacate, *sua sponte,* a $25,000 fine imposed against Defendants Alice Pauely and Joseph Morrison. The appellant court remanded the matter for reimposition of the fine.

IT IS HEREBY ORDERED that the March 30, 2001 civil penalty entered against Defendant Alice Pauely Morrison and Joseph Morrison, jointly and severally, in the amount of $25,000 shall be, and hereby is reinstated.

IT IS FURTHER ORDERED that Alice Pauley Morrison and Joseph Morrison shall pay the penalty by a check made payable to the United States of America, in

care of Geneva Halliday, Assistant United States Attorney, U.S. Attorney's Office, 211 W. Fort Street, Suite, 2001 Detroit, Michigan, 48226. Plaintiff shall be entitled to interest as provided by law.

IT IS SO ORDERED.

DATED MARCH 17, 2003

s/ George E. Woods
GEORGE E.WOODS
UNITED STATES DISTRICT JUDGE

Copies mailed this date to:

James K. O'Brien, Esq
Geneva S. Halliday, Esq
Alice Pauley Morrison and Joseph Morrison
United States Marshal Service

APPENDIX F—JAY'S TREATY- ARTICLE II, PARA 2- IDENTIFIES THE INTERNATION BORDER BETWEEN THE UNITED STATES AND CANADA

Jay's Treaty 1794 : Article II Paragraph 2

His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety-six, and all the proper measures shall in the interval be taken by concert between the Government of the United States and is Majesty's Governor General in America for settling the previous arrangements which may be necessary respecting the delivery of the said post:

The United States in the mean time, at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders, within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to move with all or any part of their effects; and it shall also be free to them to sell their lands, houses or effects; or to retain the property thereof, at their discretion; such of

them as shall continue to reside with the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the Government thereof; but they shall be a full liberty so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of His Britannic Majesty, shall be considered as having elected to become citizens of the United States.

APPENDIX G—TREATY OF PARIS 1783- IDENTIES THE INTERNATIONAL BOUNDARIES BETWEEN THE UNITED STATES AND CANADA

The Treaty of Paris 1783
Article 2

And that all disputes which might arise in future on the subject of boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz.; from the northwest angle of Nova Scotia, viz.; that nagle which is formed by a line drawn due north from the source of St. Croix River to the highlands; along the said highlands which divide those rivers that empty themselves into the river Lawrence, from those which fall into the Atlantic Ocean, to the northwestermost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into Lake Huron,

thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north western most point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude, South, by a line to be drawn due east from the determination of the line last mentioned in the latitude of thirty-one degrees of the equator, to the middle of the river Apalachicola or Catahouche; thence along the idle thereof to its junction with the Flint River, thence straight to the head of Saint Mary's River; and thence down along the middle of Saint Mary's River to the Atlantic Ocean; East, by a line to be drawn along the middle of the river Saint Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid is highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the river Saint Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one pat and East Florida on the other

shall, respectively, touch the Bay of Fundy and the Atlantic Ocean, excepting such islands as now are or heretofore have been within the limits of the said of Nova Scotia.

APPENDIX H-TREATY OF GREENVILLE:

STATUTES AT LARGE VOLUME VII PAGE 491 DATED AUGUST 3, 1795 INDIAN LAND CESSIONS IN THE UNITED STATES 1794 TO 1894 U.S. SERIAL SET, NUMBER 4015, 56TH CONGRESS, 1ST SESSION PAGES 654-655:
AMERICAN STATE PAPERS
SENATE, 4TH CONGRESS, 1ST SESSION INDIAN AFFAIRS; VOLUME 1 PAGE 562, NO. 67

Description of cession or reservation: The Ottawa and Chippewa nations of Indians cede to the U.S. all the tracts of country within the following boundaries: Beginning at the mouth of Grand River lf Lake Michigan on then. Bank thereof and following up the same to the line called for in the first article of the treaty of Chicago of August 29, 1821: thence in a direct line to the head of Thunder Bay river: thence with the line established by the Treaty of Saganaw of Sept 24, 1819, to the mouth of said river; thence NE to the boundary line in Lake Huron between the U.S. and British providence of Upper Canada: thence northwestwardly following the said line as established by the commissioners acting under the treaty of Ghent, through the straits, and river St Mary's to a point in Lake Superior N. of the mouth of Gitchy Seebing or Chocolate river; thence S. to the mouth of said river and up its channel to the source thereof; thence in a direct line to the head of the Skonawba river of

Green bay; thence down the S. bank of said river to its mouth; thence in a direct line through the ship channel into Green bay to the outer part thereof; thence S. to a point in Like Michigan W. of the North cape or entrance of Grand river, and thence E. to the place of beginning at the cape aforesaid, comprehending all the lands and islands within these limits not hereinafter reserved.

From the forgoing cession said tribes reserve for their own use, to be held in common, the following tracts for the term of five years and no longer except by permission of the U.S.

1. One tract of 50,000 acres to be located on LittleTraverse Bay.
2. One tract of 20,000 acres to be located on the N. shore of Grand Traverse bay.
3. One tract of 70,000 acres to be located on or N. of the Pierire Marquetta river.
4. One tract of 1,000 acres to be located Chingassanoo or the Big Sail, on the Cheboigan.
5. One tract of 1,000 acres to be located by Mujeekewis, on Thunder Bay River

There shall be reserved for the Chippewas living N. of the straits of Michilmackinc the following tracts, viz:

1. One tract of 3 miles square on the N. shore of said straits between Point-au-Barbe and Mille Coquin river, including the fishing grounds in front thereof.

2. One tract of 3 miles square on the N. shore of said straits between Pointe-au-Barbe and Mille Coquin river, including the fishing grounds in front thereof.
3. The Beaver islands of Lake Michigan for the use of Beaver Island Indians.
4. Round island opposite Michilimackinac as place of encampment for the Indians.
5. The islands of the Chenos with a part of the adjacent N. coast of Lake Huron corresponding in length and 1 mile in dept.
6. Sugar island, with its islets, in the river of St. Mary's.
7. Six hundred and forty acres at the mission of Little Rapids.
8. A tract commencing at the mouth of Pississowining river. S. PointIroquois; thence running up said stream to its forks; thence westward in a direct line to the Rid Water lakes; thence across the portage to the Tacquimenon river and down the same to its mouth, including the small islands and fishing grounds in fromt of this reservation.
9. Six hundred and forty acres and Grand Island
10. Two thousand acres on the mainland S. of Grand island.
11. Two sections on the northern extremity of Green Bay, to be located by a council of chiefs.

It is understood that the reservation for a place of fishing and encampment made under the treaty of St. Mary's of June 16, 1820 remains unaffected by this treaty.

It is agreed that as soon as the said Indians desire it, a deputation shall be sent to the W. of the Mississippi river, and to the country between Lake Superior and Mississippi, to select a suitable place for the final settlement of said Indians, which the U.S. will forever guarantee and secure to said Indians.

APPENDIX E-NORTHWEST ORDINANCE ARTICLE 5, ARTICLE 6

July 13, 1787

An Ordinance for the government of the Territory of the United States northwest of the River Ohio.

Be it ordained by the United States in Congress assembled, that the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates, both of resident and nonresident proprietors in the said territory, dying interstate, shall descent to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them: And where there shall be no children or descendants, then in equal parts to the next of kin in equal degree; and among collaterals, the children of a deceased brother or sister of the interstate shall have, in equal parts among them, their deceased parents' share; and there shall in no case be a distinction between kindred of the whole and half blood; saving, in all cases, to the widow of the interstate her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the

district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be (being of full age), and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered by the person being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however to the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents and the neighboring villages who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance, of property.

Be it ordained by the authority aforesaid, That there shall be appointed from time to time by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1,000 acres of land, while in the exercise of his office. There shall be appointed from time to time by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he

shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress. Previous to the organization of the general assembly, the governor

shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect a representative from their counties or townships to represent them in the general assembly: Provided, That, for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase,

until the number of representatives shall amount to twenty five; after which, the number and proportion of representatives shall be regulated by the legislature: Provided, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; Provided, also, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly or legislature shall consist of the governor, legislative council, and a house of representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the Council shall be nominated and appointed in the following manner, to

wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative

act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the Governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest: It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and

forever remain unalterable, unless by common consent, to wit:

Article I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Article II.

The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be liable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private

contracts or engagements, bona fide, and without fraud, previously formed.

Article III.

Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

Article IV.

The said territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made

on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the Legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall nonresident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefore.

Article V.

There shall be formed in the said territory, not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due North, to the territorial

line between the United States and Canada; and, by the said territorial line, to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line, drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: Provided, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

Article VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided, always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid. Be it ordained by the authority aforesaid, that the resolutions of the 23rd of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

APPENDIX J – HUMAN RIGHTS 1948 –ARTICLE 7

Human Rights 1948 - Article 7

All are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against and incitement to such discrimination.

APPENDIX K- HOUSE JOINT RESOLUTION 1514, SEC 3,4,5,

The Declaration on the granting of Independence of Colonial Peoples (1960)

The Declaration on the granting of Independence of Colonial Countries and Peoples (1960) 2. All persons have the right to self-determination by virtue of that right they freely determine their political status and freely pursue the economic, social cultural development.

3), Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence. All armed action or repressive measures of all kinds directed against dependant peoples shall cease in order to enable them to exercise peacefully and freely their rights to complete independence, and the integrity of their national territory shall be respected. 5). Immediate steps shall be taken, in trust and Non-Self-Governing Territories or all other territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without and distinction as to race, creed or color in order to enable them to enjoy complete independence and freedom.

APPENDIX L –HOUSE JOINT RESOLUTION 3103 SEC 1,2,3,

The legal status of Combatants
Struggling against alien dominations and
Racist regimes in accordance to the
Geneva Convention 1949

The legal status of Combatants struggling against alien dominations and racist regeims, was agreed to in 1973. It affirms that "the continuation of colonialism in all its forms and manifestations, as noted in General Assembly resolution 2621 (XXV) of 12 October 1970, is a crime and that colonial peoples have the inherent right to struggle by all necessary means at their disposal against colonial Powers and alien domination in exercise of their rights of self-determination..."

1). The struggle of peoples under colonial and alien domination and racist regimes for the implementation of their right to self-determination and independence is legitimate and in full accordance with the principles of international law.

2). Any attempt to suppress the struggle against colonial and alien domination and racist regimes is incompatible with the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Universal declaration of Human Rights and the Declaration on the granting of Independence to

Colonial countries and peoples and constitutes a threat to international peace and security.

3). The armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions and the legal status envisaged to apply to the combatants in the 1949 Geneva Convention and other international instruments is to apply to the persons engaged in armed struggle against colonial and alien domination and racist regimes